Amendments to the Claims:

There are presently no amendments to the claims.

REMARKS/ARGUMENTS

In response to the Office action mailed March 17, 2006 **Applicants elect with traverse Group I**, drawn to a strain of *Chromobacterium subtsugae*. In particular, Applicants traverse the restriction between Groups I and III, as well as Groups II and VII. Applicants initially request that Groups I and III be examined together. Groups I and III are drawn to a strain of *Chromobacterium subtsugae* and the supernatant thereof. The claims of Group II are drawn to a metabolite, wherein Group VII is drawn to insecticidal use of a metabolite of the product of Group II.

Where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions (MPEP §803). In establishing that an "undue burden" exists for co-examination of claims, the Examiner must show that examination of the claims would involve substantially different prior art searches, making the co-examination burdensome. To show undue burden resulting from searching difficulties, the Examiner must show that the restricted groups have a separate classification, acquired a separate status in the art, or that searching would require different fields of search (MPEP §808.02).

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* showing of serious burden. Group III is purportedly distinct from Group I because the supernatant has been classified in 424/114+. However, separate classification alone does not constitute restriction nor an undue burden. The MPEP cites that classification **and** field of search are the determining factors (see MPEP 808.02(A)(C)). Divergent classification may exist within the same field of search, as such, the supernatant of Group III is no more than the functional medium required for growth of *C. subtsugae,* wherein the field of search of the organism would not be divergent from the medium which supports the growth of the organism and forms the

subsequent supernatant. Applicants therefore request that the examiner withdraw the restriction requirement for groups I and III.

The Office Action provides the rationale that inventions II and VII are distinct because the product as claimed can be made my another and material different process, "such as by culturing other members of the genus *Chromobacterium*"; however, the product as claimed is not drawn to a Genus solely, it is drawn to the species *subtsugae*, which is not recited in the 5,428,175 patent. The '175 patent is drawn to the lone species *violaceum*, wherein there is no indication that this cultured species would produce the same metabolite as instantly claimed, nor is there a correlation (set forth in '175) that culture conditions of *violaceum* are applicable to *subtsugae*. Moreover, the instant specification details how the culture of *C. violaceum* is unlike that of *C. subtsugae* (section 0052, p. 15 of specification). Thus there was no demonstration that the *Chromobacterium subtsugae* product could be made by another and material different process. Therefore, in the absence of a showing as to why examination of the two groups meets the criteria for requiring restriction, the restriction between groups II and VII is improper and should be withdrawn.

CONCLUSION

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 510-559-5731.

Respectfully submitted,

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